

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
Joanne Jeter,)	DATE: June 18, 1992
)	
Petitioner,)	Docket No. C-92-052
)	Decision No. CR210
- v. -)	
)	
The Inspector General.)	
)	

DECISION

By letter dated December 3, 1991, Joanne Jeter, the Petitioner herein, was notified by the Inspector General (I.G.), U.S. Department of Health & Human Services (HHS), that it had been decided to exclude her for a period of five years from participation in the Medicare and Medicaid programs ("Medicaid" here represents those State health care programs mentioned in section 1128(h) of the Social Security Act (the Act)). The I.G. explained that the five-year exclusion was mandatory under sections 1128(a)(1) and 1128(c)(3)(B) of the Act because Petitioner had been convicted of a criminal offense related to the delivery of an item or service under Medicare.

Petitioner filed a timely request for review of the I.G.'s action and the I.G. moved for summary disposition. Petitioner opposed the motion because she wished to appear in person to explain her actions and to show that she had not intentionally defrauded the Medicare program. Inasmuch as such testimony would have been irrelevant in light of her criminal conviction, and because there are no disputed material issues of fact, I have granted the I.G.'s motion and have decided the case on the basis of written submissions in lieu of an in-person hearing.

APPLICABLE LAW

Sections 1128(a)(1) and 1128(c)(3)(B) of the Act make it mandatory for any individual who has been convicted of a criminal offense related to the delivery of an item or service under Medicare or Medicaid to be excluded from participation in such programs, for a period of at least five years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ¹

1. During the period relevant to this decision, Petitioner was office manager for Calvin U. Price, D.O., and was responsible for Medicare billing for Dr. Price. I.G. Ex. 1/1-2.
2. Petitioner pled guilty in the United States District Court for the Eastern District of Michigan to embezzlement of public money (18 U.S.C. § 641) in that she knowingly and intentionally defrauded the government by billing Medicare for laboratory services that were not performed in Dr. Price's office and which were not medically necessary. I.G. Ex. 2,3.
3. Petitioner was sentenced to supervised probation for two years and was fined \$1000. I.G. Ex. 4.
4. The Secretary of HHS has delegated to the I.G. the authority to determine and impose exclusions pursuant to section 1128 of the Act. 48 Fed. Reg. 21662 (May 13, 1983).
5. On December 3, 1991, Petitioner was notified by the I.G. that it had been decided to exclude her for a period of five years from participation in the Medicare and Medicaid programs because of her conviction of a criminal offense related to the delivery of an item or service under Medicare.
6. A criminal conviction for billing Medicare for services that were not performed as claimed, and which were not medically necessary, constitutes false billing and fraud related to the delivery of an item or service under Medicare or Medicare, and triggers exclusion under section 1128(a)(1).

¹ Petitioner and the I.G. submitted documentary exhibits and briefs. I admitted all of the exhibits into evidence and refer to them herein as "P. Ex. (number)" or "I.G. Ex. (number)."

ARGUMENT

Petitioner's position is that she did not intentionally do anything wrong. Specifically, she had no reason to believe that laboratory tests paid for by Medicare were not, in fact, performed by her office as claimed, and that she also had no way of knowing that Medicare was being billed for services that were not medically necessary; all she did was follow the orders of Dr. Price.

DISCUSSION

The first statutory requirement for mandatory exclusion pursuant to section 1128(a)(1) of the Act is that the individual or entity in question be convicted of a criminal offense under federal or State law. In the present case, it is undisputed that Petitioner pled guilty to a crime and was sentenced by a court of competent jurisdiction. This satisfies the definition of "convicted" within the meaning of section 1128(i) of the Act.

I find also that the requirement of section 1128(a)(1) that the criminal offense giving rise to the conviction be related to the delivery of an item or service under Medicare or Medicaid has been satisfied. Specifically, it is well-established in Departmental Appeals Board (DAB) appellate precedent that submitting false bills to Medicare or Medicaid constitutes a program-related offense mandating exclusion. Jack W. Greene, DAB 1078 (1989). This principle encompasses situations in which the provider falsely billed Medicare for services performed by another provider, as in the present case. See David D. DeFries, D.C., DAB 1317 (1992).

In light of this precedent and history, it is evident that the misconduct giving rise to Petitioner's criminal conviction, i.e., billing Medicare for services not performed in her office and/or which were not medically necessary, constitutes false billing and fraud related to the delivery of an item or service under Medicare or Medicaid, and triggers exclusion under section 1128(a)(1).

As noted above, Petitioner's position is that she did not intentionally do anything wrong. The law, however, precludes her from using the present appeal to re-litigate her criminal conviction. In other words, having pled guilty to knowing and intentional embezzlement, she

cannot now claim that she acted inadvertently or out of ignorance. Richard G. Philips, D.P.M. DAB CR133 (1991); Mark E. Silver, D.P.M., DAB CR139 (1991). And, in any event, it is the fact of conviction of a relevant offense that triggers exclusion; independent proof of criminal intent or guilt is not required to bring a conviction within the ambit of section 1128(a)(1). Dewayne Franzen, DAB 1165 (1990).

CONCLUSION

Petitioner's conviction requires her exclusion for a period of at least five years, pursuant to section 1128(a)(1).

/s/

Joseph K. Riotto
Administrative Law Judge